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FLEISCHMAN AND WALSH

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.
CHARLES S. WALSH
ARTHUR H. HARDING
STUART F. FELDSTEIN
RICHARD RUBIN
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1400 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

(202) 939-7900
FACSIMILE (202) 745-0916

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MAY 31 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

May 31, 1994

HAND DELIVERED

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Notice
Gen. Docket No. 90-314

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's rules, this is to advise that on Thursday, May 26, 1994, Dennis Patrick and Lisa Hook of Time Warner Telecommunications and Timothy Boggs of Time Warner Entertainment Company, L.P. met with Chairman Reed Hundt and Blair Levin and Karen Brinkmann of the Chairman's staff, to discuss Time Warner's position (as summarized in the attached outline of talking points) in the above-referenced docket. The matters summarized in the attached outline also were the subject of a separate oral ex parte presentation on May 26, 1994 made by Lisa Hook of Time Warner Telecommunications to Don Gips of the Commission's Office of Plans and Policy.

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If there are any questions regarding this matter, please communicate directly with the undersigned.

Very truly yours,

Seth A. Davidson

cc: Chairman Hundt
Blair Levin
Karen Brinkmann
Don Gips

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I. The FCC should use the allocation of Personal Communication Services (PCS) spectrum in Docket 90-314 to create **viable competition** to the incumbent cellular duopoly.

- DOJ, GAO and private sector studies have all concluded that cellular behaves like a classic duopoly; that creation of competition by ensuring new PCS entrants will break this duopoly and benefit consumers.
- Strong PCS competitors will lower costs to consumers and stimulate industry growth
- Weak PCS entry will consolidate the celco duopoly and injure consumers
- It is logical that incumbent cellular operations would support positions which minimize viable competition: The FCC, however, should resist these pleas.

II. For PCS service operators to provide viable competition, the Commission must:

A. Assign 40 MHz or more

- A minimum of 40 MHz at 1.8 GHz is necessary to achieve coverage/cost parity with cellular. (1.8 GHz coverage less than ¼ 800 MHz coverage)
- A minimum of 40 MHz is necessary to enable PCS initial deployment pending relocation of incumbent microwave systems.
- Assignment of 40 MHz should be made directly (rather than requiring licensee to aggregate)
  - If assignment too large, FCC can recall channels and reassign, little risk to consumer welfare
  - If assignment too small, increases transaction costs and runs risk promise of PCS may <u>never</u> be realized; winners have incentive to engage in "hostage taking" to prevent aggregation

B. Create no more than two PCS licenses per market at this time

- Ensures rigorous price competition among five competitors (2 celcos, 2 PCS, 1 ESMR)
- Ensures that each competitor can access an adequate customer base relative to the high cost of building a network

- Enables new competitors, particularly designated entities, to obtain financing on reasonable terms -- greater likelihood of survival means a lower cost of capital.

III. Eligibility for and cooperation between licensees

No matter what band plan the FCC chooses to adopt, it must limit in-region cellular eligibility if it hopes to create competition

A. Find Celcos ineligible for PCS spectrum within their service areas (no "cross-ownership")

- Celcos have adequate spectrum with superior cost/coverage characteristics
- Celcos can offer PCS today on their existing spectrum -- GTE Tele-Go is doing so now
- Celcos will acquire any PCS spectrum for which they are eligible, reducing price competition

Specifically, the FCC should prohibit in-region celcos from obtaining additional spectrum. At a maximum, one 10 MHz block should be made available to be bid on by all in-region celcos. Under the FCC's proposed band plan, this would leave one designated entity 10 MHz block and one "unrestricted" 10 MHz block for aggregation with 30 MHz blocks to create two 40 MHz players in each market -- yielding greater competition to cellular.

B. Bar in-region celcos from "affiliating" with PCS service providers, including designated entities on any basis other than customer/supplier ("non-affiliation rule")

- What in-region cellular is barred from doing directly, it should not be able to do indirectly.
- Management contracts, shared use of facilities, financial and other relationships would defeat the intent of the Commission's cross-ownership ban and stifle competition.

Specifically, the Commission should bar in-region celco affiliation with any frequency block for which it is not eligible by adopting the language from 47 C.F.R. §63.54 -- the cable-telco affiliation rule -- which prohibits all financial and business relationships by contract or otherwise, excepting only carrier-user relationships.

C. Multiple License Cooperation

- Permit licensees to aggregate, lease, finance each other, cooperate in other ways, both on 10 MHz blocks <u>and</u> 30 MHz blocks to reach market equilibrium post-auction

- Limitations
  - In-region cellular should be limited as described above.
  - Two 30 MHz licensees should be able to merge/cooperate. If that group, however, desires to align, merge or affiliate with the third 30 MHz block in a market, application must be made to the FCC and a financial showing of need made.
- Such cooperation and merger between licensees will yield a stable market over time.